No. 02-466

(4)

Supreme Court, U.S.
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In The
Supreme Court of the United States

CASINO ASSOCIATION OF LOUISIANA, INC.,

Petitioner,

v.

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, GOVERNOR, AND THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL,

Respondent.

On Petition For A Writ Of Certiorari To The Louisiana Supreme Court

REPLY BRIEF

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REPLY BRIEF

The Louisiana Campaign Statute extends campaign finance regulation in a manner never reviewed by this Court: It *bans* contributions by a *small, targeted group.* Respondent provides no reason for this Court not to consider whether this statute – like targeted contribution bans in other states, *see* Opp. at 23 – impermissibly denies Petitioners' First Amendment rights of association and expression.

1. Respondent ignores the important issues raised by Louisiana's targeted contribution ban, issues which were not presented in either *Buckley v. Valeo*, 424 U.S. 1 (1976), or *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377 (2000). Instead, Respondent assures the Court that there are "no issues left to be addressed" in the application of the First Amendment in this area. Opp. at 6. That assurance is belied by the Louisiana Supreme Court's decisions upholding the Campaign Statute in this case after finding it unconstitutional when applied to the video poker industry. *Penn v. State ex rel. Foster*, 751 So. 2d 823 (La. 1999), *cert. denied sub nom. Louisiana v. Penn*, 529 U.S. 1109 (2000).[1]

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[1] Respondent attempts to justify those opposing holdings by comparing the Louisiana Campaign Statute to the federal ban on corporate political contributions. Opp. at 28. The analogy does not hold. The "differing structures and purposes" of corporations and individuals justify the federal ban on corporate contributions, *California Medical Ass'n v. Fed. Election Comm'n*, 453 U.S. 182, 201 (1981), but no comparable distinction may be made between the "structures and purposes" of the video poker and casino businesses.

The Louisiana statute skews public discussion and denies First Amendment rights based on a person's participation in the casino industry, a legal economic activity. By prohibiting that targeted group from making any campaign contributions, the statute silences those persons in one important respect, even though the State itself has found that the silenced individuals and entities have sufficient integrity and honesty to be "suitable" for casino licensing. Pet. at 6-7.

By denying to this specific population the ability to make political contributions, the statute is a powerful political weapon that offends the First Amendment's concern for the democratic process. If the Louisiana Campaign Statute survives, what is to prevent the majority party in any state legislature from extending that model to cripple political rivals? Equally, three recent insurance commissioners in Louisiana have been convicted on criminal charges.[2] On that basis, may the insurance industry be deemed specially susceptible to corruption and may insurance-related persons be banned from making political contributions? Respondent's bland assurances can conceal neither the disturbing loss of First Amendment rights imposed by the Louisiana statute nor the broad potential use of this political weapon in the future.

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[2] *See United States v. Brown*, 303 F.3d 582 (5th Cir. 2002) (insurance commissioner convicted of making false statements); *United States v. Green*, 964 F.2d 365 (5th Cir. 1992) (insurance commissioner convicted of mail fraud and money laundering). *See also* "Edwards joins list of jailed state officials," The Daily Advertiser, October 20, 2002, available at 2002 WL 26407387 ("[state insurance commissioner] Sherman Bernard pleaded guilty to taking bribes disguised as campaign contributions").

2. Respondent also assures this Court that the statute is "closely drawn" for First Amendment purposes because it eliminates the rights of only a relatively small group of individuals and entities. Opp. at 20-21. Respondent misconceives this constitutional doctrine. The First Amendment does not require that the deprivation be confined to the rights of only a few, but that no such rights be restricted unnecessarily. *Republican Party of Minnesota v. White*, 122 S.Ct. 2528, 2534 (2002); *Shrink Missouri*, 528 U.S. at 387-88. The Campaign Statute cannot meet that standard.

Respondent points to no empirical evidence to support a targeted ban, as opposed to the state-wide limit presented in *Shrink Missouri*. Instead of empirical evidence, Respondent offers generalized historical references or anecdotal incidents, neither of which justifies a targeted ban. *Shrink Missouri*, *id.* at 390-91.

Moreover, the Campaign Statute bars contributions that otherwise meet Louisiana's statutory requirements that contributions be between $1,000 and $5,000 per candidate (depending on the office) and be publicly disclosed.[3] By authorizing such contributions by all *other* Louisianans, the legislature plainly concluded that such contributions neither are corrupt in themselves nor give the appearance of corruption. Such contributions can hardly be transformed into corrupt actions when they are made by parties found by the state to have sufficient integrity and honesty to be "suitable" for casino licensing, or when made by their spouses. The statute thus prohibits

[3] La. Rev. Stat. Ann. § 18:1505.2(H)(1)(a).

contributions that are presumptively not corrupt and should give no appearance of corruption, and is not closely drawn for First Amendment purposes.

3. Review of this case would complement this Court's examination of the federal corporate contribution ban challenged in *Fed. Election Comm'n v. Beaumont*, No. 02-304. In *Beaumont*, the U.S. Court of Appeals for the Fourth Circuit held that certain non-profit corporations should be exempt from the broad federal ban on corporate campaign contributions. 278 F.3d 261 (2002). This case presents the quite distinct question whether the First Amendment permits a contribution ban that *targets* a small group of entities and individuals because of their association with a single industry. The resolution of both questions would greatly clarify the First Amendment's impact on campaign finance laws.

For the foregoing reasons and those stated in the petition, the petition for writ of certiorari should be granted.

Respectfully submitted,

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